

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS METROPOLITAN
POLICE DEPARTMENT,

Appellant,

vs.

AMERICAN BROADCASTING
COMPANIES, INC.; THE
ASSOCIATED PRESS; CABLE NEWS
NETWORK, INC.; CHESAPEAKE
MEDIA I, LLC, D/B/A KSNV-TV; LOS
ANGELES TIMES
COMMUNICATIONS, LLC; THE NEW
YORK TIMES COMPANY; SCRIPPS
BROADCASTING HOLDINGS LLC
D/B/A KTNV-TV; WP COMPANY
LLC D/B/A THE WASHINGTON
POST AND LAS VEGAS REVIEW-
JOURNAL,

Respondents.

Electronically Filed
Dec 20 2018 02:37 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
Case No.: 75518

Appeal from the Eighth Judicial District
Court, the Honorable Stefany Miley
Presiding

MOTION TO STRIKE RESPONDENTS' APPENDICES AND
MOTION TO STAY BRIEFING

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I. INTRODUCTION

Appellant, Las Vegas Metropolitan Police Department (“LVMPD”) moves this Court to strike Respondents’ Appendix¹ and Cross-Appellant, Las Vegas Review-Journal’s (“LVRJ”) Appendix, and disregard the citations to the appendices within the Answering briefs and Cross-appeal opening brief. According to NRAP 10(a); NRAP 30(c)(1); and *Carson Ready Mix, Inc. v. First Nat’l Bank of Nevada*, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981), Respondents and LVRJ are not authorized to include documents outside the District Court record in an appendix filed in this Court. Therefore, the Court should strike the appendices and disregard Respondents’ and LVRJ’s references to their respective appendices within the Answering briefs and Opening brief.

Since LVMPD does not yet know whether Respondents’ and LVRJ’s appendices will be stricken, the time for LVMPD to file its reply brief should be stayed and extended 30 days following this Court’s order resolving this motion.

II. LEGAL ARGUMENT

According to NRAP 10(a), “The trial court record consists of the papers and exhibits filed in the district court, the transcript of the proceedings, if any, the district court minutes, and the docket entries made by the district court clerk.”

¹ Respondents refer to American Broadcasting Companies, Inc., the Associated Press, Cable News Network, Inc., Chesapeake Media I, LLC, d/b/a KSNV-TV, Los Angeles Times Communications, LLC, The New York Times Company, WP Company LLC d/b/a The Washington Post’s.

(emphasis added). NRAP 30(c)(1) mandates, “All documents included in the appendix shall be placed in chronological order by the dates of filing beginning with the first document filed, and shall bear the file-stamp of the district court clerk, clearly showing the date the document was filed in the proceedings below.” (emphasis added). With respect to the presentation of documents not filed in the district court, this Court has articulated, “We cannot consider matters not properly appearing in the record on appeal.” *Carson Ready Mix, Inc. v. First Nat’l Bank of Nevada*, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981); *see also State ex rel. Sisson v. Georgetta*, 78 Nev. 176, 178, 370 P.2d 672, 673 (1962) (striking documents in a writ petition proceeding that were not part of the underlying court’s record). Finally, this Court has determined that post-judgment motions and related papers are properly part of the record on appeal if filed and considered *prior to the filing of the notice of appeal*. *Arnold v. Kip*, 123 Nev. 410, 416–17, 168 P.3d 1050, 1054 (2007).

In the instant case, Respondents include in its appendix LVRJ’s Supplemental Brief Regarding Nev. Rev. Stat. § 239.011 concerning LVRJ’s previous Motion for Order to Show Cause, Request to Issue Sanctions, and Request for Emergency Status Check on Order Shortening Time and related exhibits, which were filed months after the appealed orders and two months after the Notice of Appeal. *See* Respondents’ Appendix to Answering Brief (“AAB”)

001-029. The supplemental briefing and related exhibits are not properly part of the appeal record. The Respondents' appendix does not contain any other documents. Thus, the entire Answering appendix should be stricken according to NRAP 10(a), NRAP 30(c)(1), and *Carson Ready Mix*. Furthermore, this Court should disregard Respondents' arguments that refer to the improper appendix. *See* Respondents' Answering Brief pp. 27–30. Alternatively, the Court could require Respondents to file a revised answering brief omitting the legal arguments.

Similarly, LVRJ's appendix includes exhibits to a motion that was filed a month after the Notice of Appeal in this case had been submitted. The exhibits included in the appendix concern communications between the Parties *after* the Notice of Appeal was filed and was not before the District Court in ruling on the appealed orders. LVRJ's appendix also includes an order from a *different* District Court case, A-09-543861-W. Thus, LVRJ's appendix, other than the Court Minutes (023–025), should be stricken according to NRAP 10(a), NRAP 30(c)(1), and *Carson Ready Mix*.

LVMPD's reply brief related to Respondents is currently due on December 28, 2018, and its reply and answering brief related to LVRJ is due on January 4, 2019. However, LVMPD does not yet know whether the Respondents' and LVRJ's appendices will be stricken. Accordingly, the Court should stay briefing

in this matter and extend the filing deadline for LVMPD's reply and answering briefs until 30 days following this Court's order resolving this motion.

III. CONCLUSION

In summary, the Court should strike Respondents' and LVRJ's appendices according to NRAP 10(a), NRAP 30(c)(1), and *Carson Ready Mix*. Additionally, the Court should stay briefing and extend the filing deadline for LVMPD's reply and answering briefs until 30 days following the Court's order resolving this motion.

Dated this 20th day of December, 2018.

MARQUIS AURBACH COFFING

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NRAP 27(e) CERTIFICATE

I hereby certify that this Motion to Strike Respondents' Appendices and Motion to Stay Briefing relies upon issues raised by LVMPD in the District Court, and otherwise complies with the provisions of NRAP 27(e). The telephone numbers and office addresses of the attorneys for the parties are as follows:

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According to the attached certificate of service, all parties through their counsel of record have been served electronically through this Court's electronic filing system. The undersigned's office also informed the Clerk of the Motion on the same day.

Dated this 20th day of December, 2018.

MARQUIS AURBACH COFFING

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **MOTION TO STRIKE RESPONDENTS' APPENDICES AND MOTION TO STAY BRIEFING** was filed electronically with the Nevada Supreme Court on the 20th day of December, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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